

pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is OMB control number 0505-0001, OMB control number 0581-0093, and OMB control number 0581-NEW.

#### Subpart B—[Reserved]

Dated: April 3, 2009.

**Robert C. Keeney,**

*Acting Associate Administrator.*

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1208

[Docket No. AMS-FV-07-0077; FV-07-705-PR]

RIN 0581-AC37

#### Proposed Processed Raspberry Promotion, Research, and Information Order; Referendum Procedures

**AGENCY:** Agricultural Marketing Service, Agriculture, USDA.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The purpose of this rule is to establish procedures which the Department of Agriculture (USDA or the Department) will use in conducting a referendum to determine whether the issuance of the proposed Processed Raspberry Promotion, Research, and Information Order (Proposed Order) is favored by producers of raspberries for processing and importers of processed raspberries. The Order will be implemented if it is approved by a simple majority of the eligible producers and importers voting in the referendum. These procedures would also be used for any subsequent referendum under the Proposed Order, if it is approved in the initial referendum. The Proposed Order is being published separately in this issue of the **Federal Register**. This proposed program would be implemented under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act).

**DATES:** Comments must be received by June 8, 2009. Pursuant to the Paperwork Reduction Act, comments on the information collection burden that would result from this proposal must be received by June 8, 2009.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments can be made on the Internet at <http://www.regulations.gov> or to the Research

and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Stop 0244, Room 0634-S, 1400 Independence Avenue, SW., Washington, DC 20250-0244; Fax (202) 205-2800; Toll Free (888) 720-9917. Comments should reference the docket number, title of action, date, and page number of this issue of the **Federal Register** and will be made available for public inspection at the above address during regular business hours or at <http://www.regulations.gov>.

Pursuant to the Paperwork Reduction Act (PRA), send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to the above address and to the Desk Office for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503.

#### FOR FURTHER INFORMATION CONTACT:

Kimberly Coy, Marketing Specialist, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, Room 0634-S, 1400 Independence Avenue, SW., Washington, DC 20250-0244; telephone 202-720-9915 or (888) 720-9917 (toll free) or e-mail [kimberly.coy@usda.gov](mailto:kimberly.coy@usda.gov).

#### SUPPLEMENTARY INFORMATION: A

referendum will be conducted among eligible producers of raspberries for processing and importers of processed raspberries to determine whether they favor issuance of the proposed Processed Raspberry Promotion, Research, and Information Order (Proposed Order), 7 CFR part 1208. The program will be implemented if it is approved by a simple majority of the producers and importers voting in the referendum. The Proposed Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act), 7 U.S.C. 7411-7425. It would cover domestic producers of raspberries for processing and importers of processed raspberries of 20,000 pounds or more. The Proposed Order is being published separately in this issue of the **Federal Register**.

#### Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

#### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

Section 524 of the 1996 Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under Section 519 of the 1996 Act, a person subject to an order may file a petition with the Department stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law. In the petition, the person may request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Department will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of entry of the Department's final ruling.

#### Initial Regulatory Flexibility Act Analysis and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) 5 U.S.C. 601-612, the Department is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be disproportionately burdened.

The 1996 Act, which authorizes the Department to consider industry proposals for generic programs of promotion, research, and information for agricultural commodities, became effective on April 4, 1996. The 1996 Act provides for alternatives within the terms of a variety of provisions.

Paragraph (e) of Section 518 of the 1996 Act provides three options for determining industry approval of a new research and promotion program: (1) By a majority of those persons voting; (2) by persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) by a majority of those persons voting for approval who also represent a majority

of the volume of the agricultural commodity. In addition, Section 518 of the 1996 Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under an order. The Washington Red Raspberry Commission (WRRRC) has recommended that the Department conduct a referendum in which approval of the Proposed Order would be based on a simple majority of the producers and importers voting in the referendum. The Department proposes that a referendum be conducted prior to the Proposed Order going into effect.

This proposed rule would establish the procedures under which producers of raspberries for processing and importers of processed raspberries may vote on whether they want a processed raspberry promotion, research, and information program to be implemented. This proposal would add a new subpart which establishes procedures to conduct initial and future referenda. The proposed subpart covers definitions, voting instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

There are approximately 195 producers of raspberries for processing and 50 importers of processed raspberries who would be subject to the program and eligible to vote in the first referendum. The Small Business Administration, 13 CFR 121.201, defines small agricultural producers as those having annual receipts of \$750,000 or less and small agricultural service firms as those having annual receipts of \$7.0 million or less. Under these criteria, the majority of producers and importers that would be affected by the referendum procedures would be considered small entities. Producers of raspberries for processing and importers of processed raspberries of less than 20,000 pounds per year would be exempt under this proposed Order.

According to the proponent group, in 2006, there were 195 producers of raspberries for processing and 34 processors of processed raspberries in Oregon and Washington States, which are the principal growing areas in the United States for raspberries destined for processing. Approximately 95 percent of the producers and 100 percent of the raspberry processors qualified under the definition for small business owners. Although California is a significant producer of raspberries, virtually all harvested product is destined for the fresh market. In 2006, there were approximately 50 importers. Based on the Department of Commerce,

U.S. Census Bureau, Foreign Trade Statistics, in 2006 two countries accounted for 96 percent of the processed raspberries imported into the United States. These countries and their share of the imports are: Chile (78%) and Canada (18%). It is unknown what percent of importers would qualify as small business. However, the recordkeeping and assessment remittance requirements would be minimal to importers since they are conducted by U.S. Customs and Border Protection Service (Customs) at the time of product entry into the United States.

This proposed rule provides the procedures under which producers of raspberries for processing and importers of processed raspberries may vote on whether they want the Proposed Order to be implemented. In accordance with the provisions of the 1996 Act, subsequent referenda may be conducted, and it is anticipated that the proposed procedures would apply. There are approximately 195 producers of raspberries for processing and 50 importers of processed raspberries who would be eligible to vote in the first referendum. Producers of raspberries for processing and importers of processed raspberries of less than 20,000 pounds per year would be exempt from assessments and not eligible to vote in the referendum.

The Department will keep these individuals informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the program implementation process. USDA will also publicize information regarding the referendum process so that trade associations and related industry media can be kept informed.

Voting in the referendum is optional. However, if producers and importers choose to vote, the burden of voting would be offset by the benefits of having the opportunity to vote on whether or not they want to be covered by the program.

The information collection requirements contained in this proposed rule are designed to minimize the burden on producers and importers. This rule provides for a ballot to be used by eligible producers and importers to vote in the referendum. The estimated annual cost of providing the information by an estimated 195 producers of raspberries for processing and 50 importers of processed raspberries would be \$195.00 for all producers or \$1.00 per producer and \$50.00 for all importers or \$1.00 per importer.

The Department considered requiring eligible voters to vote in person at various USDA offices across the

country. The Department also considered electronic voting, but the use of computers is not universal. Conducting the referendum from one central location by mail ballot would be more cost effective and reliable. USDA will provide easy access to information for potential voters through a toll free telephone line.

There are no federal rules that duplicate, overlap, or conflict with this rule.

We have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small businesses.

### **Paperwork Reduction Act**

In accordance with the OMB regulation, 5 CFR part 1320, which implements the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, the referendum ballot, which represents the information collection and recordkeeping requirements that may be imposed by this rule, has been submitted to OMB for approval.

*Title:* Processed Raspberry Promotion, Research, and Information Order.

*OMB Number:* 0581-NEW.

*Expiration Date of Approval:* 3 years from OMB date of approval.

*Type of Request:* New information collection for research and promotion programs.

*Abstract:* The information collection requirements in this request are essential to carry out the intent of the 1996 Act, to provide the respondents the type of service they request, and to administer the Proposed Order. The ballot is needed for the referendum that will be held to determine whether producers and importers are in favor of the program. The information collected is used by USDA to determine whether a majority of the eligible producers and importers voting in a referendum approve of this program. Producers and importers of 20,000 or more pounds of raspberries for processing or processed raspberries respectively, are eligible to vote in the referendum and shall be entitled to cast only one ballot in the referendum.

### **Referendum Ballot**

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.25 hours per response for each producer and importer.

*Respondents:* Producers and importers.

*Estimated Number of Respondents:* 245.

*Estimated Number of Responses per Respondent:* 1 every 7 years (0.14).

*Estimated Total Annual Burden on Respondents:* 8.58 hours.

The ballot will be added to the other information collections approved for use under OMB Number 0581–NEW.

*Comments:* Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–NEW and the Processed Raspberry Promotion, Research, and Information Order. Comments should be sent in care of Kimberly Coy to the USDA Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0244, Room 0632–S, Washington, DC 20250–0244 and the Desk Office for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503. Comments may also be sent by facsimile to (202) 205–2800 or electronically to <http://www.regulations.gov>.

All comments received will be available for public inspection during regular business hours at the same address and at <http://www.regulations.gov>. All responses to this proposed rule will be summarized and included in the request for OMB approval. All comments will also become a matter of the public record.

The Agricultural Marketing Service (AMS) is committed to complying with the E–Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

The estimated annual cost of providing the information by an estimated 195 producers of raspberries for processing and 50 importers of processed raspberries would be \$195.00 for all producers or \$1.00 per producer and \$50.00 for all importers or \$1.00 per importer.

A 60-day comment period is provided to allow interested persons to comment on this proposed information collection.

## Background

The 1996 Act, which authorizes the Department to consider industry proposals for generic programs of promotion, research, and information for agricultural commodities, became effective on April 4, 1996. The Department received the proposal for a new order from the Washington Red Raspberry Commission (WRRC).

The Proposed Order would provide for the development and financing of an effective and coordinated program of promotion, research, and consumer and industry information for processed raspberries in the United States. The program would be funded by an assessment levied on producers and importers (to be collected by Customs at time of entry into the United States) at an initial rate of one cent per pound. Producers of raspberries for processing and importers of processed raspberries of less than 20,000 pounds per year would be exempt from paying assessments. The assessments would be used to pay for promotion, research, and consumer and industry information; administration, maintenance, and functioning of the proposed National Raspberry Council; and expenses incurred by the Department in implementing and administering the Proposed Order, including referendum costs.

Section 518 of the 1996 Act requires that a referendum be conducted among eligible producers of raspberries for processing and importers of processed raspberries to determine whether they favor implementation of the Order. That section also requires the Proposed Order to be approved by a simple majority of the producers and importers voting in the referendum.

This proposed rule establishes the procedures under which producers of raspberries for processing and importers of processed raspberries may vote on whether they want the processed raspberry promotion, research, and information program to be implemented. There are approximately 245 eligible voters.

This proposed rule would add a new subpart which would establish procedures to be used in this and future referenda. This subpart covers definitions, voting, instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

All written comments received in response to this rule by the date specified will be considered prior to finalizing this action. We encourage the industry to pay particular attention to

the definitions to be sure that they are appropriate for the raspberry industry.

## List of Subjects in 7 CFR Part 1208

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Processed raspberries, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter XI of the Code of Federal Regulations be amended as follows:

1. Subpart B of 7 CFR part 1208 is proposed to be added to Title 7, Chapter XI of the Code of Federal Regulations to read as follows:

### PART 1208—PROCESSED RASPBERRY PROMOTION, RESEARCH, AND INFORMATION ORDER

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#### Subpart B—Referendum Procedures.

Sec.	
1208.100	General.
1208.101	Definitions.
1208.102	Voting.
1208.103	Instructions.
1208.104	Subagents.
1208.105	Ballots.
1208.106	Referendum report.
1208.107	Confidential information.
1208.108	OMB control number.

**Authority:** 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

#### Subpart B—Referendum Procedures

##### § 1208.100 General.

Referenda to determine whether eligible producers of raspberries for processing and importers of processed raspberries favor the issuance, amendment, suspension, or termination of the Processed Raspberry Promotion, Research, and Information Order shall be conducted in accordance with this subpart.

##### § 1208.101 Definitions.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to delegate, or any officer or employee of the U.S. Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Department* means the U.S. Department of Agriculture or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

(c) *Eligible producer* means any person who grows 20,000 pounds or

more of raspberries for processing in the United States for sale in commerce, or a person who is engaged in the business of producing, or causing to be produced for any market, raspberries for processing beyond the person's own family use and having value at first point of sale.

(d) *Eligible importer* means any person importing 20,000 or more pounds of processed raspberries into the United States in a calendar year as a principal or as an agent, broker, or consignee of any person who produces or handles processed raspberries outside of the United States for sale in the United States, and who is listed as the importer of record for such processed raspberries that are identified in the Harmonized Tariff Schedule of the United States by the numbers 0811.20.20.20, during the representative period. Importation occurs when processed raspberries originating outside of the United States are released from custody by Customs and introduced into the stream of commerce in the United States. Included are persons who hold title to foreign-produced processed raspberries immediately upon release by Customs, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of processed raspberries from Customs when such processed raspberries are entered or withdrawn for consumption in the United States.

(e) *Raspberries* mean and include all kinds, varieties, and hybrids of cultivated raspberries of the genus "Rubus" grown in or imported into the United States.

(f) *Processed Raspberries* means raspberries which have been frozen, dried, pureed, made into juice, or delivered in any other form altered by mechanical processes other than fresh.

(g) *Order* means the Processed Raspberry Promotion, Research, and Information Order.

(h) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term "partnership" includes, but is not limited to:

(1) A husband and a wife who have title to, or leasehold interest in, a raspberry farm as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So-called "joint ventures" wherein one or more parties to an agreement, informal or otherwise, contributed land and others contributed capital, labor, management, or other services, or any variation of such contributions by two or more parties.

(i) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(j) *Representative period* means the period designated by the Department.

(k) *United States* or *U.S.* means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

#### § 1208.102 Voting.

(a) Each eligible producer of raspberries for processing and eligible importer of processed raspberries shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord/tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to process raspberries, in which more than one of the parties is a producer or importer, shall be entitled to cast one ballot in the referendum covering only such producer or importer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer or importer, or an administrator, executor, or trustee or an eligible entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail as instructed by the Department.

#### § 1208.103 Instructions.

The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions of this subpart, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible producers and importers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

#### § 1208.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions of this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

#### § 1208.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

#### § 1208.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

**§ 1208.107 Confidential information.**

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Order and the voter list shall be strictly confidential and shall not be disclosed.

**§ 1208.108 OMB control number.**

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44

U.S.C. Chapter 35 is OMB control number 0581–NEW.

Dated: April 3, 2009.

**Robert C. Keeney,**

*Acting Associate Administrator.*

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